

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: COMTECH 21, LLC	DOCKET NOS. TCU-04-3 WRU-04-5-3436
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**ORDER GRANTING APPLICATION, APPROVING CONCURRENCE IN MAPS,
AND GRANTING WAIVER**

(Issued April 26, 2004)

On February 11, 2004, Comtech 21, LLC (Comtech), filed an application with the Utilities Board (Board) for issuance of a certificate of public convenience and necessity, pursuant to Iowa Code § 476.29 (2003), stating its intention to provide local exchange telecommunications service in Iowa in certain exchanges served by Qwest Corporation (Qwest) and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom). The application has been identified as Docket No. TCU-04-3. Comtech has provided the qualifications of its company officers and financial statements and has stated it will support a 2-PIC methodology for dialing parity.

Iowa Code § 476.29(2) provides that a local exchange carrier shall not be denied a certificate if the Board finds that the applicant “possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with the public interest.”

The Board has reviewed Comtech's application and finds the necessary technical, financial, and managerial abilities to provide local exchange service have been demonstrated. It is in the public interest to approve Comtech's application.

Comtech also states that its service area will mirror the service territory of the exchanges and service area maps of Qwest and Iowa Telecom as they are currently filed and may be modified in the future. Iowa Code § 476.29(4) requires that each certificate define the service territory in which land-line local telephone service will be provided and authorizes the Board to promulgate rules establishing the requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have maps on file with the Board that show exchange boundaries. The Board finds that Comtech has complied with the statutory and rule requirements by concurring in Qwest's and Iowa Telecom's exchange maps.

Comtech requests the Board waive the requirements of 199 IAC 16.5(2), 18.2, and 22.3(1). The waiver requests are identified as Docket No. WRU-04-5-3436.

Comtech requests a waiver of 199 IAC 16.5(2), which requires the keeping of records according to the uniform systems of accounts. Comtech states it will maintain its books in accordance with generally accepted accounting principles (GAAP). The Board finds this waiver should be granted since records kept in accordance with GAAP accounting are acceptable for a competitive local exchange service provider.

Comtech also requests the requirements of 199 IAC 18.2 be waived. The rule requires that a regulated public utility keep its records in Iowa. The Board will grant

the waiver based on Comtech's statement that it will make the records available to the Board upon request.

Comtech also requests a waiver of 199 IAC 22.3(1), requiring it to independently publish a directory. The Board will grant the waiver based upon Comtech's statement that it will arrange for its customers to be included in the directories already being published in the areas it provides local exchange service.

Rule 199 IAC 1.3 states that the Board may grant waivers if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, the waiver would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests as described above and finds that the waiver meets the four criteria of the rule and the evidence in support of the waiver is clear and convincing.

Adherence to these rules would be an undue hardship on Comtech because each rule would involve additional expense without necessity or benefit. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantially equal protection for health, safety, and welfare provided since the actions waived will be completed under different circumstances.

Comtech has not filed proposed tariffs for Board approval setting out the prices, terms, and conditions of providing local exchange service. The Board finds that a certificate should not be issued to Comtech until it has approved tariffs.

IT IS THEREFORE ORDERED:

1. The application for a certificate of public convenience and necessity filed by Comtech 21, LLC, on February 11, 2004, is granted, subject to the requirement that follows.
2. The Board will issue a certificate of public convenience and necessity allowing Comtech 21, LLC, to provide local exchange service upon approval of tariffs reflecting the prices, terms, and conditions of local exchange service in Iowa.
3. Comtech 21, LLC's concurrence in the maps and boundaries of the exchanges of Qwest Corporation and Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, is approved.
4. The waiver of 199 IAC 16.5(2), 18.2, and 22.3(1) identified as Docket No. WRU-04-5-3436 is granted as described in this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 26th day of April, 2004.